



KEMPSEY
Shire Council

DIRECTOR CORPORATE SERVICES REPORT

14th February 2006

DCS10	SOUTH WEST ROCKS POOL FILE: L5678 (L475) GBS
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SUMMARY:

Reporting on a request to amend the Lease relating to the South West Rocks Pool and other public amenities.



DESCRIPTION:

As part of the land dealings in conjunction with the South West Rocks Country Club Ltd redevelopment proposals in 2002, an area of Crown land containing the Swimming Pool, Change Rooms, Netball Courts etc. was sold to the Club on the condition that it be leased back to Council for the term of 20 years (+ 10 year option).

The terms of the Lease include the following clauses relating to payment of rates and charges –

"Payment of Rates

6.1 The Lessee covenants to pay within fourteen (14) days after demand therefore in writing has been made by or on behalf of the Lessor to the Lessee the amount equal to twenty five percent (25%) of all Shire rates and charges payable with respect to Lot 7 in Deposited Plan 1032643 being part of the Premises.

Payment for water and electricity

7.1 The Lessee covenants to pay for all charges for water and electricity supplied to the Premises."

Note:

In this lease the Lessee is Council and the Lessor is South West Rocks Country Club Ltd.

At the time of drafting this lease, and in line with the rating and charging regime which existed at that time, it was the intention that –

- a) The Lessor would pay Council's Ordinary Rates, Water Base Rate, and Sewer Base Rate and recover 25% from the Lessee. (In 2002/03 these rates amounted to \$1,240 + \$412 + \$470 respectively).
- b) The Lessee would pay consumption charges for water (say \$1,500pa) and sewer charges for additional WC's (say \$800pa).

The introduction of "best practice" water and sewer pricing has significantly altered the responsibilities.

The Water and Sewer Base Rates have been replaced with an Access Charge relative to the water meter size. The subject lease area is serviced by a 100mm water meter due to the swimming pool requirements and the 2005 / 06 Access Charges for water and sewer are \$4,620 and \$11,168 respectively.

The South West Rocks Country Club Ltd has written to Council advising that in their opinion they are not liable for the Water and Sewer Access Charges and request that the lease documents be amended to clarify the situation.

On the basis that: -

- a) the access charges were introduced subsequent to the drawing up of the lease, and
- b) the requirements for a 100mm water connection relate to Council's usage of the leased property it would be reasonable for Council to concur with the Club's request.

Council's Solicitor has advised that if Council is of a mind to concur with the Club's request it could do so by way of an exchange of letters without the necessity to amend the lease documents. This course of action would protect Council's interest into the future should there be any subsequent changes to the structure of "Shire rates and charges".

REPORT IMPLICATIONS:

- ***Environmental***

Nil

- ***Social***

Nil

- ***Economic (Financial)***

Under the terms of the lease Council was responsible for 25% of Water and Sewer Base Charges ie. approximately \$200pa. Should Council adopt the Recommendation it will

accept responsibility for the new Water and Sewer Access Charges, currently \$15,788pa. This increase in cost represents additional General Fund expenditure.

- *Policy or Statutory*

Nil

- *Director's Review*

As per Report.

RECOMMENDATION:

That Council provide a letter to the South West Rocks Country Club to advise that Council agrees to treat the cost of Water and Sewer Access Charges as a consumption charge payable by the Lessee (Council) under Clause 7.1 of the Lease.

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G B Snape
DIRECTOR CORPORATE SERVICES